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Supreme Court of the United States

October Term, 1948
No. 390

HENRY M. PROPPER, as Receiver of the Property and Assets, within the State of New York of A. K. M.,
Petitioner,

against

TOM C. CLARK, Attorney General, as Successor to the Alien Property Custodian,
Respondent.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF DEEMS TAYLOR TO AMEND THE DOCKET OF THIS COURT SO AS TO INCLUDE SAID DEEMS TAYLOR, AS PRESIDENT OF AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS AS A RESPONDENT ON THIS APPEAL

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Motion

Now comes Deems Taylor, as President of the American Society of Composers, Authors and Publishers (hereinafter called ASCAP), an unincorporated association of more than seven members, by his attorney Louis D. Frohlich and moves the Court that the docket be amended so as to include ASCAP as a respondent on this appeal.

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* Figures in parenthesis refer to page numbers in the Transcript of Record, Vol. 2.

In explanation of the above motion, the following is submitted:

Petitioner filed an application for a writ of certiorari on October 30, 1948. That petition failed to designate ASCAP as a party to the action. Certiorari was granted on January 3, 1949 and argument is now set for the week of March 28th, 1949.

This case now appears on the docket of this Court without any mention of the fact that ASCAP has any interest in the subject matter of the action, although the judgment under review directs ASCAP to pay the Attorney General, the respondent herein, the sum of $46,839.54.

Since the inception of this action on or about April 23, 1946 (1), ASCAP has actively participated in all of the proceedings taken herein. It was designated as a party on the appeal to the Court of Appeals and is so referred to in the statement under Rule 15(b), as well as throughout that record. ASCAP was the defendant-appellee on that appeal to the Court of Appeals (28, 29, 34-40), a brief was filed in that Court on its behalf and the appeal was argued by one of my partners (40).

Shortly after a copy of the petition for the writ of certiorari was served on me, my office was advised that, by reason of the importance of the question involved, the Attorney General expected to join in a portion of the application. Accordingly, no papers were filed on behalf of ASCAP in opposition to the application for the writ, in the belief that certiorari would be granted as a matter of course.

The writ was granted on January 3, 1949. Thereafter, nothing further was heard about the matter. My office was never consulted about the record, nor was any copy thereof served upon me prior to March 7th, 1949 at which time, the Clerk of this Court mailed a copy of the record to me pursuant to written request for same. At the same time, the Clerk advised me that ASCAP had no standing to be heard on the appeal to this Court unless a motion was made for that purpose.

It is respectfully submitted that ASCAP should not be deprived of an opportunity to be heard on this appeal simply because petitioner has arbitrarily seen fit to ignore it as a party. A disposition of this appeal, without an opportunity for ASCAP to be heard, where its property is the subject of the appeal, would be a denial of due process. It is respectfully requested that the docket of this Court be amended as hereinabove indicated, so that ASCAP may be afforded an opportunity to file a brief and be heard on the argument hereof.

Respectfully submitted,

Louis D. Frohlich,
Attorney for Respondent Deems Taylor as President of American Society of Composers, Authors and Publishers.